Filed 5/20/19 County of San Diego v. J.D. CA4/1

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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

COUNTY OF SAN DIEGO, Plaintiff and Respondent, v. J.D., Defendant and Appellant; M.B., Respondent.	D072958 (Super. Ct. No. D418093)

APPEAL from a judgment of the Superior Court of San Diego County, Patricia Guerrero, Judge. Affirmed.

J.D., in pro. per., for Defendant and Appellant.

Xavier Becerra, Attorney General, Julie Weng-Gutierrez, Assistant Attorney General, Linda M. Gonzalez and Jennevee H. de Guzman, Deputy Attorneys General, for Plaintiff and Respondent.

No appearance for Respondent.

Following a trial de novo after appellant J.D. objected to the commissioner's child support order (which were treated as findings and a recommended order (Fam. Code, § 4251, subd. (c))), the family court determined that the respondent County of San Diego (County) owed J.D. $2,046 in child support overpayments; that the San Francisco County Department of Child Support Services (SF DCSS) properly served the County with a valid notice of judgment lien as to the $2,046; and that the $2,046 would be applied in partial satisfaction of the SF DCSS's judgment lien. On appeal from the final judgment, J.D. contends that the County—through the San Diego County Department of Child Support Services (Department)[1]—and the SF DCSS colluded to deprive him of the $2,046 overpayment to which he was entitled.

We affirm. As we explain, J.D. did not meet his burden of establishing reversible error. On two independent grounds, J.D. forfeited appellate consideration of his collusion argument: J.D. did not ask the family court to rule on the issue of collusion; and in his appellate brief, although J.D. raised the issue, he failed to support it (or any other contention) by reasoned argument and citations to authority. In any event, even if we were to reach the merits, the result would be no different, because J.D. did not provide a reporter's transcript of the trial de novo at which live testimony was presented, and, as we explain, we are required to assume that the unreported proceedings contained evidence that the Department and the SF DCSS did not collude.

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1 As we explain in greater detail at footnote 4, *post*, the County, represented by the district attorney, filed the underlying complaint in 1995; and in this appeal the Attorney General is representing the respondent, which he identifies as the Department.

I. INTRODUCTION

" 'A judgment or order of the lower court is *presumed correct.* All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown. This is not only a general principle of appellate practice but an ingredient of the constitutional doctrine of reversible error.' "[2] (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564; accord, *Jameson, supra,* 5 Cal.5th at pp. 608-609.) "It is well settled, of course, that a party challenging a judgment has the burden of showing reversible error by an adequate record." (*Ballard v. Uribe* (1986) 41 Cal.3d 564, 574; accord, *Jameson*, at p. 609.) " ' "A necessary corollary to this rule is that if the record is inadequate for meaningful review, the appellant defaults and the decision of the trial court should be affirmed." ' " (*Jameson*, at p. 609.)

The record in the present appeal consists of a clerk's transcript, plus two augmentations by the Department, and one augmentation by J.D. In addition, by order filed January 31, 2019, we treated J.D.'s January 15, 2019 letter as a renewed motion to augment the record with the remainder of the documents that were not accepted for augmentation following his original (June 2018) motion; and we denied the motion in part and deferred ruling on the remainder. We now deny J.D.'s renewed request as to all

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2 In setting forth what he considers the standard of review on appeal, J.D. suggests that the trial court erred "by not providing substantial evidence to support the findings on review" and concludes by arguing that "[t]he Courts, San Diego, and [SF DCSS] have failed to meet their substantial burden of proving that the courts had a legal standing to award the retroactive child support in the amount of $2,046.00." However, it is *J.D.* who has the burden of establishing reversible error (*Jameson v. Desta* (2018) 5 Cal.5th 594, 609 (*Jameson*)); neither the courts, the County, the Department, nor the SF DCSS has the burden of proving anything in this appeal.

additional materials, on the basis that each of these documents either is already a part of the clerk's transcript (by original designation or augmentation) or does not contain sufficient indicia that it was filed with or received by the family court prior to issuance of the judgment on appeal as required by California Rules of Court, rule 8.155(a)(1)(A) and *Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 444, footnote 3.

Contrary to what is stated in the Department's brief, the record on appeal does not include a reporter's transcript of any of the proceedings.

In the family court, at times J.D. was represented by counsel, and at times (including at the underlying trial de novo that resulted in the judgment) J.D. represented himself. He has been representing himself throughout this appeal. In both the trial and appellate courts, the procedural rules apply the same to a self-represented party as to a party represented by counsel. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984-985; *Flores v. Department of Corrections & Rehabilitation* (2014) 224 Cal.App.4th 199, 205 ["The same rules apply to a party appearing in propria persona as to any other party."]; *In re Marriage of Rothrock* (2008) 159 Cal.App.4th 223, 235 [self-represented party "not entitled to special treatment from the court"]; *Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246-1247 [self-represented party "not exempt" from briefing rules].) Thus, while J.D.'s self-represented status no doubt has contributed to certain procedural and substantive deficiencies, it does not excuse them. (*Rappleyea*, at p. 984 [self-representation is not a basis for lenient treatment]; *Nwosu*, at pp. 1246-1247.)

II. FACTUAL AND PROCEDURAL BACKGROUND[3]

In October 1995, the County, represented by the district attorney's office, filed the underlying governmental complaint against J.D. to establish that J.D. was G.R.D.'s parent and that J.D. was required to pay child support for the benefit of G.R.D.[4] Pursuant to a March 1996 judgment, the family court determined that J.D. was G.R.D.'s parent and ordered J.D. to pay to the San Diego County District Attorney's Office of Revenue and Recovery child support as follows: $2,046 in retroactive support for the period from November 1, 1992, though April 30, 1993; and ongoing monthly support of $341 as of

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[3] We view and recite the evidence in a light most favorable to the judgment on appeal. (*In re Marriage of Kamgar* (2017) 18 Cal.App.5th 136, 148; *In re Marriage of Whealon* (1997) 53 Cal.App.4th 132, 143 ["classic mistake" for appellant to rely on evidence favorable to appellant, rather than on "evidence favorable to the judgment"].)

[4] The district attorney—as a political subdivision of the State of California, representing the public interest in establishing parentage and establishing, modifying, and enforcing child support obligations—filed the underlying action pursuant to then applicable Welfare and Institutions Code *former* sections 11350, 11350.1, and 11475.1 (repealed by Stats. 1999, ch. 478, §§ 8, 9, 24). Currently such statewide responsibilities lie with the California Health and Human Services Agency's Department of Child Support Services, which is charged with "administer[ing] all services and perform[ing] all functions necessary to establish, collect, and distribute child support." (Fam. Code, § 17200.) For these purposes, generally each county is required to establish its own department of child support services, commonly referred to as a "local child support agency" or "LCSA." (Fam. Code, §§ 17304, 17400, subd. (a), 17404, subd. (a).) In the present action, what we have defined as the "Department" is San Diego County's LCSA, and what we have defined as the "SF DCSS" is San Francisco County's LCSA.

On appeal, the Attorney General represents the respondent, which he treats as the Department (without explanation), even though the plaintiff in the action is the County. We will do the same, on the basis that the Attorney General is authorized to "defend[] on appeal" any support order or support-related order "in the public interest" (Fam. Code, § 17407, subd. (a)); and we defer to the Attorney General for knowing the identity of the party on whose behalf he is submitting a brief.

November 1, 1995. In response to J.D.'s June 1999 request to modify support, in a September 1999 judgment, the family court again ordered $2,046 in retroactive child support for the period from November 1, 1992, through April 30, 1993, but lowered his monthly support obligation.

Meanwhile, the SF DCSS initiated a similar action against J.D. in the San Francisco Superior Court. Pursuant to a September 1999 judgment, the San Francisco court determined that J.D. was G.S.D.'s parent and ordered J.D. to pay to the San Francisco Family Support Bureau ongoing monthly child support in the amount of $257 as of August 1, 1999. In May 2000, the San Francisco District Attorney registered the September 1999 San Diego support judgment in the San Francisco action. (See Fam. Code, § 5601.) In September 2000, the clerk of the San Francisco court issued an abstract of support judgment in favor of the San Francisco Family Support Bureau, *as assignee of the judgment creditor*, and against J.D., as judgment debtor.

In October 2000, the child support actions for both children, G.R.D. (San Diego) and G.S.D. (San Francisco), were consolidated into the later-filed case in the San Francisco court.

In February 2015, after the emancipation of both children, J.D. filed a request in the San Diego family court for an order to return to him previously paid child support under the San Diego judgment. Over J.D.'s objection, the commissioner presided over the hearing; J.D. filed written objections to the commissioner's findings and

recommendations; and the family court judge conducted a trial de novo.[5] In September 2016 (with findings and order after hearing filed in Jan. 2017), the family court ruled that, as a result of a San Diego conviction for welfare fraud by the children's mother, M.B., J.D. had overpaid child support in the amount of $2,046 during the period November 1, 1992, through April 30, 1993. The court referred the matter back to the commissioner to decide various issues, including, as relevant to this appeal, whether the $2,046 should be paid to J.D. or applied as an equitable offset to J.D.'s unpaid child support.

While that matter was pending before the commissioner, in mid-March 2017 the SF DCSS served the County with a notice of lien based on the amount of unpaid child support that had accrued since the September 1999 judgment in the San Diego case. Accordingly, in late March 2017, the Department filed a notice of the SF DCSS's judgment lien (in the amount of $30,322.21) in the San Diego action. As backup for the lien, the Department attached the October 1999 abstract of judgment in the San Diego action, the September 2000 abstract of judgment in the San Francisco action, and a computer printout of current charges, arrears, interest, and payments.

Later that month (Mar. 2017), the commissioner issued his findings and recommendations. Once again, the commissioner ruled that J.D. was entitled to the

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[5] If, before a hearing, a party objects to the commissioner acting as a temporary judge, the commissioner is empowered only to hear the matter and report findings of fact and a recommended order to the family court; i.e., the commissioner effectively acts in an advisory capacity, and the parties are entitled to a de novo review hearing before a superior court judge. (Fam. Code, § 4251, subds. (b), (c); *County of Sacramento v. Llanes* (2008) 168 Cal.App.4th 1165, 1172 (*County of Sacramento*) [local child support agency case].)

$2,046, plus interest from January 17, 2017, but asked for further briefing as to the effect of the San Francisco abstract of support judgment and the San Diego notice of lien on the $2,046 payment to J.D. Within days, the Department responded with a motion for an order authorizing the Department, in partial satisfaction of the SF DCSS's March 2017 notice of lien, to turn over to the SF DCSS the $2,046 owed to J.D.

At the continued hearing in June 2017, the commissioner ordered (in part) that, pursuant to the Department's notice of lien and Code of Civil Procedure section 708.410 et seq.,[6] the $2,046 to which J.D. was entitled "should be utilized to satisfy the lien[.]" Before the hearing, J.D. again had timely objected to the commissioner acting as a temporary judge (Fam. Code, § 4251, subd. (b)); after the hearing, J.D. again objected to the commissioner's order (Fam. Code, § 4251, subd. (c)), and in September 2017 a trial de novo proceeded before the superior court judge (*ibid*.).[7]

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6 This statutory scheme is found in the Code of Civil Procedure at article 5 (Lien in Pending Action or Proceeding) of title 9 (Enforcement of Judgments) of civil actions (Part 2). (See pt. III., *post*.)

7 " 'A hearing *de novo* literally means a new hearing, or a hearing the second time. [Citation.] Such a hearing contemplates an entire trial of the controversial matter in the same manner in which the same was originally heard. It is in no sense a review of the hearing previously held, but is a complete trial of the controversy, the same as if no previous hearing had ever been held. . . . A hearing *de novo* therefore is nothing more nor less than a trial of the controverted matter by the court in which it is held. The decision therein is binding upon the parties thereto and takes the place of and completely nullifies the former determination of the matter.' " (*County of Sacramento*, *supra*, 168 Cal.App.4th at p. 1173 [trial de novo after timely objections under Fam. Code, § 4251, subds. (b), (c)].)

At the trial de novo, the court considered the evidence presented, including "the testimony at the hearing." In its findings and order after hearing, the court directed that a judgment be entered in favor of J.D. in the amount of $2,046 (as of the date of trial in Sept. 2017), and that, pursuant to Code of Civil Procedure section 708.470, the $2,046 "shall be directly transferred to SF[ ]DCSS pursuant to its rights under the judgment to satisfy its lien." In a related ruling, the family court found that J.D. did not timely file a claim of exemption to the SF DCSS's lien.

A week later, the court entered a judgment under Code of Civil Procedure section 708.470, consistent with its findings and order after hearing, as follows: Based on the January 2017 findings and order after hearing (from the September 2016 trial de novo), J.D. is entitled to a judgment in the amount of $2,046 (presumably from the County, but the judgment does not state); the SF DCSS is a judgment creditor (presumably of J.D., but the judgment does not state); J.D. did not file a claim of exemption (presumably to the SF DCSS's judgment lien, but the judgment does not state); and the $2,046 shall be paid directly to SF DCSS pursuant to its judgment lien.[8]

In October 2017, J.D. timely appealed from the September 2017 judgment.

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8 In this latter regard, Code of Civil Procedure section 708.470, subdivision (a) provides in part: "If the judgment debtor [here, J.D., as judgment debtor *to the SF DCSS* from earlier proceedings] is entitled to money or property under the judgment in the action [i.e., the present action] . . . and a lien created under this article exists [here, the SF DCSS's judgment lien], upon application of any party to the action [here, the Department] . . . , the court may order that the judgment debtor's rights to money or property under the judgment be applied to the satisfaction of the lien created under this article as ordered by the court."

III. DISCUSSION

The judgment ordered that the $2,046 be paid directly to SF DCSS pursuant to the SF DCSS's judgment lien. (See Code Civ. Proc., § 708.470, subd. (a), quoted at fn. 8, *ante*.) J.D.'s brief on appeal is less than clear as to the arguments J.D. asks this court to consider.[9] That said, a recurring theme in J.D.'s appellate brief is that the Department and the SF DCSS colluded to deprive J.D. of the $2,046 to which he was entitled.[10] As

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9 For example, the only point heading in J.D.'s brief is entitled, "County of San Diego Department of Child Support Service's Defendant and Respondent Failed to Disclose Fraud and Deciet of the Material Fact" (*sic*). However, plaintiff County does not assert a claim or cause of action for fraud or deceit in its complaint; and the record on appeal does not contain a copy of (or reference to) either a cross-complaint or affirmative defense alleging fraud or deceit on behalf of defendant J.D. In summary, J.D.'s 15-page "Argument" contains the following points: the elements of a cause of action for fraud and deceit (Civ. Code, §§ 1572, 1710); the elements of cause of action for concealment (Civ. Code, § 1710; CACI No. 1901); the elements of the crime of filing false documents (Pen. Code, § 115); unfair business practices under federal law (15 U.S.C. § 1692(f)(1)); violations of the federal "Omnibus Budge Reconciliation Act of (1993) § 13721 (P.L. 103-66) . . . (45 C.F.R. 303.101(c)(2)[])]"; the federal due process clause (U.S. Const., 14th Amend., § 1); "No Substantial Evidence of Lawful Action"; "Fraud Upon the Court (7th Circuit Court of Appeals)"; a violation of rule 60(b)(3) of the Federal Rules of Civil Procedure (28 U.S.C.); unfair debt collection practices under federal law (42 U.S.C. § 666); a "violation of operation of law which created a debt due" under federal law (18 U.S.C. § 666); the statute of limitations for fraud (Code Civ. Proc., § 338, subd. (d); CACI No. 1925); the elements of a cause of action for filing false documents; and "fraud and deceit based on concealment." (Some capitalization and italics omitted.)

10 For example, J.D. argues: "By placing a lien on a money judgement both counties colluded with one another by, not revealing the true nature of the money judgement, with the courts, or the Secretary of State by stating, the payment in the amount of $2,046.00 was an overpayment not a post support order, of retroactive child support. . . . [¶] And by the [Department] the initiating county and San Francisco the enforcing county colluding with one another to conceal the true nature of the judgement order and awarded payment by fraud and deceit, by not disclosing the true material facts of how this case was derived. To satisfy an[] arrears balance in the amount of $30,322.21, both counties claim I owe . . . . [¶] . . . [¶] And this action allowed both [the Department] and

we explain, however, on at least two independent bases, J.D. has forfeited appellate review of this argument;[11] and, even if we considered the argument, because J.D. failed to provide a record of the oral proceedings at the trial de novo, we have no alternative but to affirm the judgment.

First, "only those issues tendered in the trial court may be raised on appeal." (*County of Sacramento, supra,* 168 Cal.App.4th at p. 1173 [appeal from judgment following a trial de novo after timely objections to the child support commissioner and his findings].) That is because " '[a] party is not permitted to change his position and adopt a new and different theory on appeal. To permit him to do so would not only be unfair to the trial court, but manifestly unjust to the opposing litigant.' " (*Cable Connection, Inc. v. DIRECTV, Inc.* (2008) 44 Cal.4th 1334, 1350, fn. 12, quoting *Ernst v. Searle* (1933) 218 Cal. 233, 240-241.)

In the present case, there is no record of the parties' submissions at the trial de novo—only the Department's motion to partially satisfy the SF DCSS's judgment lien and J.D.'s written objections to the commissioner's order. In his objections, J.D.

[the SF DCSS] to collude with one another to continue to intentionally conceal and misrepresent to the courts the true nature of this case, and order and hid this fact of the defendant and respondents felony welfare fraud and conviction." (*Sic*.)

11 "Waiver is the ' " 'intentional relinquishment or abandonment of a known right,' " ' whereas forfeiture is the ' "failure to make the timely assertion of a right." ' " (*Reid v. Google, Inc.* (2010) 50 Cal.4th 512, 521, fn. 3.) " 'As a practical matter, the two terms on occasion have been used interchangeably.' " (*Keener v. Jeld-Wen, Inc.* (2009) 46 Cal.4th 247, 262, fn. 19.) However, " 'forfeiture' is the correct legal term to describe the loss of the right to raise an issue on appeal due to the failure to pursue it in the trial court." (*In re Stier* (2007) 152 Cal.App.4th 63, 74.)

complained that *the $2,046 was being paid to M.B. (the mother).*[12] More to the point, based on the record on appeal, J.D. did not file any opposition to the Department's motion or otherwise suggest at the trial de novo that the Department and the SF DCSS colluded to deprive J.D. of a direct payment of the $2,046. On this basis, therefore, J.D. forfeited appellate consideration of the collusion argument.

Second, when an appellate brief raises a point but fails to provide " ' "reasoned argument and citations to authority, we treat the point as waived [or forfeited (see fn. 11, *ante*)]." ' " (*Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 956.) For example, like the present case, in an appeal involving a father and a LCSA where the appellant's brief "included citations . . . , but without any meaningful legal argument," the appellate court deemed the point forfeited. (*Kern County Dept. of Child Support Services*

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12 J.D.'s complaint is not borne out by the record. The commissioner directed that *the $2,046 judgment in favor of J.D.* "*be utilized to satisfy the lien imposed by* [*the SF DCSS*]"—i.e., not paid to mother—pursuant to Code of Civil Procedure section 708.410 et seq. (Italics added.) However, in his declaration submitted in support of his objections, J.D. testified (all quotations verbatim; all italics added): The Department, the SF DCSS, and the commissioner violated his due process rights by "making a final order to *give the retroactive amount of 2046 of child support plus interest back to the mother*"; "by *sending the money back to the mother* with interest is setting a unfair precedent and also opening up avenues of the California crime of filing false documents penal code 115"; "[the Department] and sf dcss placing this lien because of a balance *they claim I owe*[] *to the mother*"; "for the courts to say its okay for the 2046 I was legally awarded to me by [the superior court judge] and [the commissioner,] and for the commissioner to put in a new recommendation findings and state *its okay for the funds to go back to the mother* is truly illegal and unjust and setting a stage of precedents as I stated in my response that *its okay to reward the mother twice* for her fraudulent behavior it is just not just or judicial fair to do this"; "by *giving this money back to the mother . . . .*"; "*any and all payments will go back to the mother*"; "the commissioner recommend[ed] that *all payments go back to the mother*"; and "I was reward theses funds and for the courts *to send it back to the mother . . . .*"

v. Camacho (2012) 209 Cal.App.4th 1028, 1037, citing *People v. Stanley* (1995) 10 Cal.4th 764, 793; accord, *In re Marriage of Falcone & Fyke* (2008) 164 Cal.App.4th 814, 830 ["The absence of cogent legal argument or citation to authority allows this court to treat the contentions as waived [or forfeited]."].) That is because California Rules of Court, rule 8.204(a)(1)(B) requires that an appellate brief "support each point by argument and, if possible, by citation of authority"; and "[a]n appellate court is not required to make arguments for parties" (*Cox v. Griffin* (2019) 34 Cal.App.5th 440, 447).

In the present case, the 15 pages of "Argument" in J.D.'s brief contain rambling statements, none with record references or a coherent argument that is potentially applicable to the judgment on appeal. To the extent J.D.'s brief contains legal authority—e.g., the elements of a cause of action for fraud or deceit; the elements of the crime of filing false documents; application of the Federal Rules of Civil Procedure; violations of the federal law, etc. (see fn. 9, *ante*)—J.D. fails to present argument as to how such authority applies to that portion of the judgment directing payment of the $2,046 to the SF DCSS. In so doing, J.D. forfeited appellate consideration of the points he attempted to communicate in his brief on appeal.

Even if we were to assume that J.D. raised cogent legal arguments on appeal that he first presented at the trial de novo—i.e., even if we were to overlook the J.D.'s above-described forfeitures—the result would be no different. Where, as here, the appellant fails to present a reporter's transcript (or agreed statement or settled statement) of a trial, yet presents fact- or evidence-based arguments on appeal, we have no alternative but to affirm the resulting judgment. (*Jameson, supra*, 5 Cal.5th at p. 609 [" 'Failure to provide

an adequate record on an issue requires that the issue be resolved against [the appellant].' "]; Cal. Rules of Court, rule 8.120(b) ["If an appellant intends to raise any issue that requires consideration of the oral proceedings in the superior court, the record on appeal must include a record of these oral proceedings"].) That is because: "Where no reporter's transcript has been provided and no error is apparent on the face of the existing appellate record, the judgment must be conclusively presumed correct as to all evidentiary matters. To put it another way, *it is presumed that the unreported trial testimony would demonstrate the absence of error*." (*Estate of Fain* (1999) 75 Cal.App.4th 973, 992, original italics omitted, italics added.) Here, J.D.'s only contention potentially before us is that the Department and the SF DCSS colluded to deprive J.D. of the $2,046, and we know that the family court considered testimony presented at the trial de novo. Thus, without a reporter's transcript, we must presume that the evidence at trial would "demonstrate the absence of error" (*ibid*.)—namely, that there was no such collusion between the Department and the SF DCSS.

For the foregoing reasons, J.D. has not met his burden on appeal of establishing that the family court erred in entering its September 2017 judgment. More specifically, J.D. did not establish that the court abused its discretion in ordering that the $2,046 due to J.D. "shall be directly transferred to SF[ ]DCSS pursuant to its rights under the judgment to satisfy its lien" pursuant to Code of Civil Procedure section 708.470, subdivision (a). (See *Brown v. Superior Court* (2004) 116 Cal.App.4th 320, 334 [under Code Civ. Proc., § 708.470, subd. (a), "whether to apply the judgment proceeds to satisfy [the SF DCSS's]

judgment lien, in the face of [J.D.'s] competing . . . claim, was a discretionary decision for the trial court"].)

IV. DISPOSITION

The September 2017 judgment is affirmed. The County is entitled to its costs on appeal. (Cal. Rules of Court, rule 8.278(a)(2).)

IRION, J.

WE CONCUR:

HUFFMAN, Acting P. J.

DATO, J.